

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

ACMA USA, INC.,

Plaintiff/Counterclaim Defendant,

v.

Civil Action No. 3:08CV0071

SUREFIL, LLC,

Defendant/Counterclaim Plaintiff.

**EXCERPTS FROM THE DEPOSITION OF
CHRISTOPHER SIMMONS TO BE READ INTO EVIDENCE**

Pursuant to the Court's Pretrial Scheduling Order, Defendant, Surefil, LLC, served designated deposition testimony of Christopher Simmons on Plaintiff, ACMA USA, Inc. ("ACMA"), on October 29, 2008, to which ACMA did not object or serve counter-designations.

Defendant hereby submits the designated deposition testimony of Christopher Simmons, which was stenographically recorded on September 8, 2008, to be read into evidence during the trial of this case.

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5 Q. Could you state your name, please?

6 A. My name is Christopher Eric Simmons.

7 Q. And what is your current occupation, Mr. Simmons?

8 A. I currently work for Hewlett Packard on the Delphi

9 account in charge of global security on the Delphi.

10 Q. And what is global security on the Delphi?

11 A. Fundamentally, if -- there are different facets of HP

12 on the Delphi account, there's many different

13 divisions of CSC, which is another large company,

14 EDS, which I think a lot of you are familiar with,

15 and, of course, HP and Delphi themselves, and if

16 they're requiring security to any particular server,

17 which is over 4,000 servers, I'm probably the one

18 involved in giving elevated privileges.

19 Q. Mr. Simmons, you've been asked to testify on behalf

20 of Surefil in this case?

21 A. Yes, sir.

22 Q. And if you could tell the jury how you came about

23 being involved in it, on what occasion, and then

24 we'll talk about what you have divined from that

25 involvement.

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1 A. Sure, sure. I was approached by another associate

2 that I've worked with who had mentioned that there

3 was an individual company that was looking for having

4 some assistance in evaluating a particular challenge

5 they had with some computer systems, and so I was

6 asked to see if I'd be interested in analyzing it.

7 Since I have my own personal company on the
8 side that I actually work and do extra work for, I
9 agreed that I would take a look at the issue that the
10 company had, and that issue, of course, was Surefil.

11 Q. And what was it specifically you were going to look
12 at at Surefil?

13 A. Specifically needed to analyze a particular computer
14 system, analyze what was any challenges with it and
15 its operating performance, and also see if there is
16 any problems with it not performing what it was
17 expected to be.

22 Q. So when did you first come to the Surefil facility?

23 A. I came to Surefil -- and I just want to make sure I
24 don't make any mistakes there -- but it was back
25 approximately four months ago. It was around the

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1 23rd of May, somewhere in May, so pretty towards the
2 end of the month there.

3 Q. And what were you asked to look at?

4 A. I was asked to look at a particular computer system
5 that ran some equipment on the shop floor.

6 Q. Do you know what equipment it ran on the shop floor?

7 A. I'm not sure if I know the exact name. It was an

8 ACMA product, but I mean, it actually was used to
9 fill fluids in a bottle and it was for a particular
10 manufacturer, a large manufacturing company.

11 Q. And what were you specifically asked to look at on
12 the ACMA machine?

13 A. Sure. I was specifically asked to look at the
14 current computer that's in place that's running the
15 system, and then also to look at a piece of another
16 computer system that was actually replaced by the new
17 one and analyze its performance and workability.

18 Q. Okay. You talked about the current computer that was
19 running the system. Is that operating okay?

20 A. The one that's in place now as of the date that I was
21 in, it was working properly.

25 Q. And how about the other computer?

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1 A. At the time that I analyzed, the other computer was
2 working, but it was not working with the equipment
3 that was on the shop floor, the ACMA production
4 bottle line system, and it was actually not in
5 place. It was actually had already moved it off of
6 production and put it in a secure location.

7 Q. And what were you looking at -- that older computer,

8 we'll call it that way, what were you looking at that
9 older computer for?

10 A. Sure. What I was looking at the old computer is to
11 make sure it was functioning properly, that the
12 system would boot up and it would be able to run what
13 a normal computer system would run, and then we also
14 needed to analyze if there was some issues with any
15 power supply or analyze with any challenges with it
16 not working what the predicted specs were.

17 Q. Why were you looking at the power supply issue?

18 A. Because there had been some discussions that there
19 might have been some challenges with communicating to
20 the equipment and there could potentially have been
21 some power issues that had happened.

22 Q. So what did you do when you examined the computer?

23 A. I brought the computer up in a very secure,
24 ventilated area and analyzed some simple testing
25 techniques to make sure that the operating system was

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1 working, making sure I could communicate with the
2 mouse and the keyboard, making sure to look at some
3 event logs to make sure that they were giving me any
4 information to give me some ideas of what any

5 potential problems were going on with the computer
6 system; analyzed any of the additional cards or
7 anything additionally attached to the system and see
8 if there was any problems in those areas.

9 Q. Okay. And what did your examination determine?

10 A. During my analysis I found that the computer system
11 worked properly. It booted properly. The mouse and
12 keyboard, the initial things attached to it didn't
13 have any issues into them. The event log didn't
14 really have too many error problems with the actual
15 computer system.

16 During that process I also did look to make
17 sure there was some battery backups or some type of
18 support in case power failure had happened with the
19 system, and all of that had been working good.

20 There was a challenge with a specific
21 internal card that connects directly to the bottling
22 equipment or the external device that's there --
23 equipment I should say -- and that I noticed there
24 were some burnt marks and then there was also some
25 resistors that had popped -- or I use pop, but, you

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1 know, the example that they had snapped off or you

2 could see that they were broken.

3 So as I noticed that, I was then curious to
4 find out how that could have happened, and
5 considering that the main power supply to the
6 computer equipment was working properly, it didn't
7 seem to -- the battery backup or the APC was not
8 working incorrectly and it didn't show any failures.

9 One side note: Because I was trying to
10 figure out the problem, I specifically made sure that
11 the battery backup was connected to that computer
12 system. I followed all of the hard wire connections,
13 followed it back into the location where it was
14 plugged into the surge protector. Then I also did a
15 test for a power-to-power failure. It was a very
16 simple switch to see if the battery backup unit did
17 work, and the backup battery unit did work and it did
18 automatically shut down the system, and so I was
19 feeling pretty confident that that part was working.
20 And considering that it was the original APC that had
21 been in place for over a year I was told, it seemed
22 to be doing it effectively.

23 Just to be kind of sure, I did contact APC
24 and I did ask if there was any chance of there being

25 some type of power fluctuation that could have came

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1 through the battery backup system and still do any
2 damage to the computer system, and they said that if
3 there had been some type of surge or brownout, it
4 should have and would have taken out the APC battery
5 backup first, and I think in my notes here I did get
6 a document from them that referred to that note
7 there.

8 So I hope I haven't gone too far.

9 Q. That's all right. The card, the internal card that
10 you talked about that had the burnt marks and the
11 resistors that popped off, what was the purpose for
12 that card?

13 A. It had a very key purpose. It is actually what
14 controls the bottling equipment for Surefil. There
15 is only one connection that goes to that particular
16 card, and that card feeds into the equipment and has
17 different channels that go to separate different
18 parts within that piece of equipment.

19 Q. This is a computer card?

20 A. Yes, sir.

21 Q. And it's not the only computer card in this computer?

22 A. Yes, sir, that is correct. There is also what they
23 call a NIC card, or Network Interface Card computer
24 card, but fundamentally every one of us are used to
25 taking your computer and, you know, if you have a

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1 fast Internet connection at home, plugging a cable
2 in. That is also an external card that is applied to
3 the computer system, and that was in place and that
4 was working properly without any errors.

5 Q. So this card was making the communications between
6 that card and the Surefil machine?

7 A. Yes, sir.

8 Q. Called bus cards?

9 A. Yes, sir.

10 Q. And what did you determine or did you determine --
11 you saw that there were burnt marks and resistors
12 that had popped. What did that mean to you?

13 A. Well, for that to have happened to the card in such a
14 way -- there's only two ways that power could have
15 came in: It would have came in from the mother board
16 of the actual computer system or it would have came
17 in through a cable that connects to the card, and
18 since there was no other damage within the mother

19 board, the power supply, or the computer system
20 itself, that only left one other avenue for the power
21 supply to have come in, and at some point through the
22 connection to that card there had been an influx of
23 power that had overwhelmed the card and caused those
24 resistors to be in the shape that they are now.

25 Q. And the wire, that wire went from the card to what?

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1 A. That wire directly fed into the bottling equipment
2 that runs the filling of the bottles of the shampoo,
3 I believe, that went into the system, and there were
4 direct leads to that. It was specifically purple, so
5 it was a very unique type cable, so it was very easy
6 to see where it went to and where it actually split
7 into its different facets into the equipment.

8 Q. Was there any -- did you examine the cable?

9 A. Yep, I did examine the cable, and one of the things
10 that I noticed is that as the cable goes to -- and
11 let me just give a little better clarification. This
12 piece of equipment, this bottling equipment, is quite
13 large, and there are different pieces that -- or
14 different pieces of equipment that this computer
15 system controls as it processes its equipment there,

16 and so you can see where the cable goes and where it
17 splits and goes to different parts of the piece of
18 equipment.

19 It was very interesting that as the cable
20 went, you could see that the cable management was all
21 together at one point, but there was this unique
22 cable that split off from the original cable that you
23 could see was out of scope or was out of space, I
24 mean, it just shouldn't have been there, and if you
25 got to following that wire, we could see that the

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1 wire had became frayed and it didn't just become the
2 plastic off a little bit, it was cable, then wire,
3 and then cable again, and there was an area where it
4 specifically had been worn.

5 Q. Could you draw any conclusions from that?

6 A. Based that that cable directly connected back to the
7 computer system and you could see where -- and I'm
8 going to use an electrical term -- how it arched or
9 the electricity sparked, you could see where that had
10 actually happened right there in the area. And
11 obviously you can't see the report yet, but in the
12 report I do have a picture of what that wire looked

13 like and it is quite frayed.

14 MR. MARSHALL: I'm going to move to have

15 this marked as Exhibit 1 to –

24 (By Mr. Marshall) Mr. Simmons, I ask you to look at

25 what's been marked as Simmons Exhibit Number 1 and

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1 ask if that demonstrates or that shows the wire that

2 we're talking about that was frayed and then arcked?

3 A. Yes, sir, this is the wire that did cause that issue.

4 Q. Okay. And how does the wire that's frayed and

5 arcked, what does that have to do with the card, the

6 bus card that is -- that was burnt marked and was

7 missing some of the transistors?

8 A. Well, being that wire, of course, needs to be

9 shielded so that it doesn't cause, you know, any

10 arcking or any power to be spread out, you could see

11 this directly led back to the card that connected the

12 computer system, which obviously caused the power arc

13 that was there, and any piece of wire that doesn't

14 have any clear shielding and touches against any

15 other type of metal can obviously create a large

16 challenge for the power and surging computer

17 equipment.

18 Q. And with that bus card being in that condition, was
19 the computer able to communicate any further with the
20 machine?

21 A. No, no. Actually -- and I did bring in another
22 picture that actually shows the actual resistors that
23 were here, and you could see where it actually -- and
24 I use the word pop -- it literally just popped off of
25 the card, and then you can also see that the second

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1 one did that as well, and there's three of them that
2 are actually there that are part of this.

6 MR. MARSHALL: Sure, I will be happy to do
7 that. I will have this marked as Exhibit 2.

8 THE WITNESS: I was just hoping to make
9 sure that I was clear, so.

10 (Exhibit 2 marked.)

11 Q. (By Mr. Marshall) My question -- and I don't know if
12 you've answered this question or answered another
13 question, so I need to ask it again, my question is,
14 once the sparking occurs, the arcking occurs and what
15 happens to that bus card happened to the bus card, is
16 the computer able to communicate with the rest of the
17 machine?

18 A. No. With those transistors not connected to the
19 actual board, the -- and it's in two places that it
20 cannot -- you know, you cut a wire, the power won't
21 go through there -- and fundamentally, you disrupt
22 the flow of, you know, the power going through the
23 card, it obviously won't flow.
24 Q. Is there anything that could be done or could have
25 been done to avoid an arcking in a cable from

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1 affecting the card the way it did?
2 A. You could do a few things, and one of the things that
3 I would definitely look at is trying to put some type
4 of protection along that wire, either fuse or some
5 type of cable going in, then a surge protection and
6 then on the other way. You know, those would be the
7 simplest way to try to, you know, not allow that to
8 happen, because these computer systems today are
9 very -- they are complex, and, you know, there need
10 to be a lot of protection in place to make sure that
11 things like that won't happen.
12 Q. Okay. And did you look at this computer to determine
13 if any of those protections had been put in place?
14 A. I did, and I did do a pretty detailed analysis of

15 that, and I could not find any protection in place.

16 As a matter of fact, I don't believe there is still

17 any protection in place as of the last time that I

18 was in on the new system.

24 Q. Do you have any opinion as to where this power surge

25 came from or where this arcking came from?

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1 A. My opinion is that this -- the card having the damage

2 that was done to it specifically came from this wire

3 arcking along some metal equipment that produced the

4 power surge back to that card.

5 Q. And these opinions are held by you as somebody that's

6 trained in this industry?

7 A. I believe so. I've been in it for almost 15 years.

8 Q. And you hold these opinions with a reasonable,

9 probable view?

10 A. Yes, sir, I do.

SUREFIL, LLC,

By /s/ Christine A. Williams
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to:

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